# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>May 12, 2005 |
| v | No. 253942<br>Muskegon Circuit Court |
| DEANDRE DESHAUN CARTER,<br><br>Defendant-Appellant. | LC No. 03-049331-FH |

Before: Cooper, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possessing with the intent to deliver 450 or more but less than 1000 grams of cocaine, MCL 333.7401(2)(a)(ii), and possession of a firearm by a person convicted of a felony, MCL 750.224f. Defendant was subsequently sentenced, as a third habitual offender, MCL 769.11, to a term of seventeen to forty-five years' imprisonment for his conviction of possessing with the intent to deliver cocaine, and eighteen months to ten years for possessing a firearm as a felon. Defendant appeals as of right. We affirm.

This case arises from defendant's participation in an undercover "reverse buy" operation. At the outset of the operation, defendant agreed to purchase eighteen ounces (approximately 510 grams) of cocaine from an undercover police officer posing as a drug supplier. A meeting between the two was subsequently arranged to exchange the cocaine for defendant's automobile, which was to be used as collateral until defendant could "move" the cocaine. In accordance with this agreement, defendant met the undercover officer in the parking lot of a local department store where, while seated inside the officer's car, defendant was handed a paper sack containing eighteen individually packaged one-ounce baggies of cocaine. After placing the sack on his lap, defendant opened the sack and removed three baggies. As defendant was inspecting the contents of the baggies, the undercover officer signaled other officers stationed in the parking lot, who then approached the vehicle and placed defendant under arrest. During a search of defendant's apartment several hours later, the police discovered a handgun hidden in one of two shoe boxes located underneath defendant's bed.

On appeal, defendant first argues that the evidence at trial was insufficient to support that he possessed between 450 and 1000 grams of cocaine, as required for conviction under MCL 333.7401(2)(a)(ii). We disagree. Challenges to the sufficiency of the evidence in criminal trials are reviewed de novo to determine whether, when viewed in a light most favorable to the

prosecutor, a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Randolph*, 466 Mich 532, 572; 648 NW2d 164 (2002).

In challenging the sufficiency of evidence to support his conviction, defendant argues that the evidence at trial showed that he was in possession of no more than three ounces (approximately 85 grams) of cocaine at the time of his arrest. In making this argument, defendant relies on the testimony of the arresting officer, who indicated that at the time defendant was taken into custody the paper sack containing the remaining fifteen ounces of cocaine was located on the console of the vehicle. However, it is well established that "[a] person need not have actual physical possession of a controlled substance to be guilty of possessing it." *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). To the contrary, the offense of possession of a controlled substance merely requires a showing of power and intention to exercise dominion or control over the controlled substance, with knowledge of its presence and character. *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003); see also, e.g., *People v Burgenmeyer*, 461 Mich 431, 439 n 12; 606 NW2d 645 (2000). As such, possession may be either actual or constructive. *Id*. at 166. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance. *Wolfe*, *supra* at 521. "Moreover, possession may be joint, with more than one person actually or constructively possessing a controlled substance." *Id*. at 520.

Here, viewing the evidence in a light most favorable to the prosecution, we conclude that the evidence was sufficient to support that defendant possessed the entire eighteen ounces of cocaine at the time of his arrest. Although the testimony cited by defendant suggests that he physically possessed only three ounces of cocaine at that time, the totality of the circumstances indicates a sufficient nexus between defendant and the remaining fifteen ounces. *McKinney*, *supra*. Indeed, defendant was not merely present in the car where the cocaine was located, but rather, was present for the express and previously agreed purpose of purchasing the eighteen ounces of cocaine actually handed to him while inside the car. Although defendant is correct that the undercover officer who provided him this contraband acknowledged at trial that he did not intend to permit defendant to leave the vehicle with the cocaine and, thus, remained in control of that substance, that fact does not preclude a finding that defendant also held the right to exercise dominion and control over the cocaine. As previously noted, "possession may be joint, with more that one person actually or constructively possessing a controlled substance." *Wolfe*, *supra*. Here, defendant was provided the opportunity to exercise such control, which he accepted by knowingly receiving the contraband from the officer. Consequently, we find that the evidence was sufficient to permit a rational trier of fact to conclude beyond a reasonable doubt that defendant possessed the entire eighteen ounces of cocaine. *Randolph*, *supra*.

In reaching this conclusion, we reject defendant's contention that a conviction for possessing a controlled substance arising from a "reverse buy" requires some act of assent to the transaction beyond mere inspection of the contraband. The cases on which defendant relies as support for this proposition, although each involving a completed sale and attempt to transport the contraband away from the site of the transaction, do not require such acts for a valid conviction. Rather, as noted above, all that is required for a conviction of possessing a controlled substance is a showing of power and intention to exercise dominion or control over

the controlled substance with knowledge of its presence and character. *McKinney*, *supra*. Here, defendant does not dispute that he was aware of the presence and character of the substance at issue, of which we have already determined defendant exercised sufficient dominion and control to support his conviction.

Defendant also argues that the evidence at trial was insufficient to support that he possessed the firearm found during the search of his apartment. Again, we disagree.

As with possession of a controlled substance, possession of a firearm may be actual or constructive and may be proved by circumstantial evidence. See *People v Hill*, 433 Mich 464, 469-471; 446 NW2d 140 (1989). A defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant. *Id*. at 470-471. Here, defendant does not dispute that the handgun found in a box underneath his bed was readily accessible to him. Defendant contends only that the evidence at trial was insufficient to support that he had knowledge of the presence of the handgun within that box. However, in addition to containing the handgun, the box at issue contained a greeting card addressed to defendant. Moreover, a second box containing a digital scale on which cocaine residue and defendant's fingerprints were detected was found next to the box containing the handgun and greeting card. Such evidence, although circumstantial, was sufficient to support a rational trier of fact in concluding that defendant had knowledge of the contents of those boxes, including the firearm at issue. *Rudolph*, *supra*.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra